

Attachment 2 - INFORMATION SUBMITTED BY THE APPLICANT REGARDING THE ORIGINAL COLLECTION OF THE KILLER WHALE NAMED KSHAMENK (Funtime, Inc. d/b/a Six Flags Worlds of Adventure)

The original application states (in Section V.f) that the adult male killer whale named Kshamenk was taken from the area know as Samborombón Bay, Argentina with authorization by the Argentinean government. The animal stranded on November 17, 1992, at low tide. Attempts to return the animal to the wild at the time of the stranding were unsuccessful. On November 19, 1992, the animal was rescued and transferred to Mundo Marino. The animal was 4.26 m in length and approximately one year of age. The animal was suffering from dehydration and sunburn. After lengthy medical treatments by government technicians, the killer whale was placed with a zoological institution (Mundo Marino) by the Argentinean government. The applicant further states that Mundo Marino is in compliance with Argentinean government rules and regulations as evidenced by the “C” certificate, and that the importation of this killer whale will not result in the collection of a killer whale from the wild.

Documents Provided in Original Application:

- 1) “C” certificate– Issued by the Secretariat of Sustainable Development and Environmental Policy indicating that Kshamenk was obtained by beaching at Bahia San Borombon swampy crab grounds (On the inventory, 20 animals were beached, 3 were incidental takes, 9 were captive births and 3 were imports).
- 2) Mendez Letter– Letter (not dated but fax receipt is dated October 13, 2001) in which Mr. Mendez, the Director of Mundo Marino, states that it is the intent to return stranded marine mammals to the sea and only when the animal is wounded or damaged is it transported to the veterinary center for medical care. The technicians periodically inform the government about the treatment of each animal and after treatment a determination for release is made. When release is not possible, as in Kshamenk’s case, the animal stays at the zoological institution.

Additional Information Submitted by Applicant on February 12 and 19, 2002, After Original Application Was Received by NMFS:

Six Flags referenced the “C” certificate issued by the Secretariat of Sustainable Development and Environmental Policy as evidence of the legality of Kshamenk’s rescue and permanent placement with Mundo Marino. Nevertheless, Six Flags provided a “Report Regarding the Stranding, Rehabilitation, and Definitive Possession of Kshamenk.” In addition, several affidavits from documented eyewitnesses to the stranding and contemporaneous letters and reports from members of the scientific and marine mammal communities recommending Kshamenk be maintained in captivity are attached. A corroborating statement from the attending veterinarian directly responsible for Kshamenk’s care is included. Six Flags concludes that based on the available evidence, Kshamenk’s stranding, rehabilitation and placement with Mundo Marino were proper and lawful.

Documents Provided:

- 1) Report Regarding the Stranding, Rehabilitation, and Definitive Possession of Kshamenk– Provides a summary of the documents and reports to follow which have been incorporated into the specific relevant Sections.
- 2) Aerial Photographs and Nautical Chart of Samborombón Bay– The aerial photographs are intended to show that there is almost no sloping. With low-tide the inter-tidal zone is almost dry, extending several hundred meters. With high tide the water enters the channels or “rias”, flooding all surfaces. The nautical chart is intended to corroborate the extensive bay coastline of approximately 240 km with very shallow waters and minimal slope. During high tide, water floods the coastal areas and marshes through inland waterways, but with low tide, because of the low depth and minimal slope, inter-tidal areas can extend kilometers. The inter-tidal areas are naturally occurring traps for cetaceans who enter the bay to feed (because of an abundance of fish), but become trapped at low tide. Excavation in the southern area of the bay where an average of one marine mammal skeleton per every 20,000 m² suggest that marine mammals have become trapped in this area for several hundreds of years. Furthermore, the nature of the sediments in the bay are formed mainly by non-compacted and extremely plastic materials. This mud has a very high proportion of water and its hardness is very low. These sediments are characterized by their poor wave reflective nature, which act as wave buffers, and affect the echolocation systems of cetaceans, thus increasing the occurrence of stranding.
- 3) Graphs of Cetaceans and Pinnipeds treated at Mundo Marino (1987 - 2002)– Because of the numerous strandings (pinnipeds, cetaceans and birds) that occur in this area, in 1987, the Marine Fauna Rescue and Rehabilitation Center (Center) was established. The work of the Center is recognized and valued by the scientific community, government authorities and academic institutions. The graphs provided indicate that killer whales are one of eleven cetacean species that have been attended to at the Center (making up 8.7% of all cetaceans, exact numbers are not given). In addition, numerous pinniped species have been attended to by the Center (exact numbers not given). A graph is provided that gives numbers of specimens attended by the Center (species not broken out) since 1987.
- 4) Strandings of Killer Whales in Buenos Aires Province– This list of stranded killer whales known to have stranded and not attended to by Mundo Marino or the Center illustrates that Mundo Marino is not the only institution that has responded to a stranding and that strandings are not isolated to the Samborombón Bay area, but occur along the Buenos Aires Province coastline. Mundo Marino reiterates that they only intervene when the animal in question is in need of medical attention and mention the 1996 stranding as a case in point where a female and her calf were determined to be able to free themselves with the tide and were monitored until escape with the tide was possible.

- 5) Stranding Chronology as outlined in the Report Regarding the Stranding, Rehabilitation, and Definitive Possession of Kshamenk (from Mundo Marino)

November 17, 1992

8:00 am - Mr. Miquel Marchi, while on his boat, saw an animal on the coast of Salinas Stream, in Samborombón Bay. He confirmed it was a killer whale stranded in the mud.

9:00 am - Mr. Marchi notified Mundo Marino by radio on his boat.

12:00 - Mundo Marino arrives and diagnoses the killer whale with serious alteration in the respiratory rate and a bad sunburn. After several hours, rescuers freed the animal from the mud and put him on an inflatable boat. During this time, his respiratory rate was seriously altered.

9:30 pm - The killer whale was put into the medical pool at Mundo Marino. Despite efforts of the staff, the killer whale died.

November 18, 1992

5:00 am - Fisherman report that four killer whales had been sighted stranded in the coast along “Ria de Ajo” mouth in the late afternoon of the previous day.

8:00 am - Mundo Marino staff was sent by boats, but had to walk the last two kilometers due to low tide. Once arriving on the scene, only one killer whale remained stranded and it was assumed that the other three whales freed themselves during high tide. The remaining killer whale (a young male, Kshamenk) showed signs of serious sunburn and was probably under deep stress. Several alternatives were analyzed to rescue this animal, but none were viable. The stranding area was an extended and flat surface covered with only 10 - 20 cm of water approximately 2 km away from the zone of deeper water. The decision was made to attend to the animal on site until the next high tide could allow the animal escape.

November 19, 1992

8:00 am - As the animal was unable to escape during the subsequent high tide, rescue tasks were started. As time passed, the animal was observed weaker and quieter and it was estimated that he had been stranded for more than 2 days.

6:00 pm - The animal was brought to Mundo Marino on an inflatable boat, where he was put into a quarantine tank.

- 6) Testimony of fisherman Federico Blehn (Captain of “Nueva Realidad” accompanied by Cesar Fabian Marchi and Osvaldo Oscar Puentas)– Statement indicates that on November 17, 1992, they were fishing approximately 2 miles from the coast sailing northward (approximately beginning at 2:00 pm). They threw their nets three times and continued sailing to a place situated between the mouth of “Rio de Ajo” and “Arroyo Ancho” where they sighted two big objects near the coast with movement in the water and sea birds overhead (approximately 7:00 pm). They attempted to approach in the fishing boat, but were running ground at which time they anchored the boat. Mr. Marchi and Mr. Puentas approached the objects in a smaller boat with oars. When they returned,

they reported four live killer whales (three big and one small), stranded in a muddy and sandy zone. The boat continued to San Clemente del Tuyu Port, but was unable to enter due to the low tide and had to wait until approximately 3:00 am to return to port. At 5:00 am, Mr. Blehn notified Mundo Marino, Mr. Suhr, of the animals and their location. (Testimony taken February 1, 2002.)

- 7) Testimony of fisherman Fabian Marchi (Sailor aboard “Nueva Realidad” accompanied by Federico Blehn and Osvaldo Puertas)– Mr. F. Marchi reiterates that the boat was fishing on November 17, 1992. After sailing for several hours, they passed near “Rio de Ajo” and saw in the distance some dark bulks, big in size, but unidentifiable. He confirms the low tide and accompanying Mr. Puertas in a boat with oars to reach the area. He verifies that there were four stranded killer whales that were very quiet as they approached. They proceeded to pour water on them because they were very dry, especially the biggest, and observed the whales moving and emitting a small whistling sound. They returned to the boat and reported the observations to Mr. Blehn, at which time it was decided to return to port to inform officials of the animals. He confirms that they reached the mouth of the “Rio de Ajo” at night, but had to wait until the water level had risen to enter the port. It was not until early November 18 that they could enter port and Mr. Blehn informed Mundo Marino about the killer whales. (Testimony taken February 1, 2002.)
- 8) Testimony of fisherman Osvaldo Puertas (Sailor aboard “Nueva Realidad” accompanied by Federico Blehn and Fabian Marchi)– Mr. Puertas states that on November 17, 1992 (after midday), he was aboard the boat with the above mentioned individuals fishing. He declares that some hours had passed when they reached the “Rio de Ajo”. They continued northwards before reaching the “Arroyo Ancho” where they observed several bulks near the coast. Mr. Blehn anchored the boat in deeper waters, while he and Mr. F. Marchi approached in a boat with oars. They rowed approximately 2, 500 m until they reached the area where they found four killer whales (three very big and one small) near the coast. They were able to get out to the boat (depth of the water was no-more than 20 - 30 cm) and approach the animals. They walked around the animals which were very quiet and showing little movement, but occasionally moving and lifting the tail, splashing water. They stayed for a long time pouring water on the animals to wet them down. They returned to the boat to inform Mr. Blehn of the situation and proceeded to return to port. They were unable to enter port until early the next morning as there was a very low tide. At the port, they informed a person at Mundo Marino about the animals. (taken February 1, 2002)
- 9) Map of Samborombón Bay indicating Stranding Sites– Distance between stranding events is 6 km.
- 10) Letter from Mendez to Gil de Muro– Summary of the stranding events to Mr. Jose Gil de Muro, Director of the Ministry of Fishing and Agriculture Affairs dated November 24, 1992, as reported by Jose David Mendez, Director, Mundo Marino. The chronology of

the stranding events is summarized above. The report further mentions research being conducted by the Oceanarium regarding the frequency of strandings in the Samborombón Bay area. With pinnipeds, it was concluded that the causes of stranding are unique to species and individuals. Penguins strand due to problems originating from oil. It is assumed that one of the principle causes of strandings of cetaceans are the particular characteristic of the sediments (as described previously).

- 11) Veterinarian Report No. 1 (November 17, 1992)– Dr. Julio Daniel Loureiro, attending veterinarian, reports that the first stranded animal was male, 5.5 m long, and about 2,800 kg. This animal was observed with loosening skin on the back of the animal due to sun exposure. The following samples were taken on site:
- Urine sample - observed a great number of RBCs, presumably due to renal failure;
 - Blood work - increased WBCs and eosinophils;
 - Blood chemistry - increase of enzymes (GPT, GOT and LDH), probably responsive to muscle and liver lesions, typical of strandings; and
 - Bacteriological analysis - feces and respiratory fluid (waiting to type bacteria).

The respiratory rate was continuously monitored and determined to be well over the normal value, sometimes reaching 100 respirations per 10 minutes. The normal value is 8 respirations in a 10 minute period. During transport and when the animal was agonizing, it presented vomit with a great number of parasites. Some of these were identified as *Anisakis*, and this finding was consistent with the values found in the blood. The animal died due to respiratory arrest.

- 12) Veterinarian Report No. 2 (November 19, 1992)– Dr. Julio Daniel Loureiro, attending veterinarian, reports that the second stranded animal (Kshamenk) was a part of a multiple stranding event that occurred on November 17, 1992. This animal presented with multiple skin lesions, specifically in the area of the dorsal fin. The animal also presented leukocytosis with notable eosinophilia, which could suggest a large parasite load. There was increased phosphorous in the blood. The respiratory rate was within normal values. Bacteriological cultures of fecal, respiratory fluid and urine were taken, but had not been analyzed yet. Around the clock maintenance of this animal included behavioral observations, respiratory checks, treatment of the skin lesions, and collection of fecal samples. Prognosis of this animal was guarded at the time.
- 13) Memorandum from Veterinary Section (Dr. Julio Daniel Loureiro, attending veterinarian) to Mendez, director, Mundo Marino, dated February 12, 1993– The skin lacerations were treated with different cicatrizing ointments and tissue regenerators, which enabled satisfactory gradual change. Oxfendazole was used to remove the parasites (suspected *Anisakis*). Fecal samples continued to be tested for parasite load by the La Plata Veterinary Sciences Faculty, which confirmed *Anisakis* and identified *Teniae* in the samples. Staff had been unable to perform many recommended diagnostic tests on this animal (exact reason unclear). As such, the following pathologies could not be

disregarded: chronic renal insufficiency, different osseous processes, and hypoparathyroidism. The progress for diagnosis and treatment was noted as slow-going, and therefore the prognosis for this animal was still reserved at the time.

- 14) Letter from Dr. Richardo Bastida (Marine Mammal Task Group Director) to Mendez (Director, Mundo Marino) and “Technical Report Status Review of the Orca Named Kshamenk Mundo Marino Aquarium San Clemente Del Tuyu Province of BS. AS. - Argentina” dated December 1, 2001– The letter and report authored by Dr. Bastida states that the review of situation involving Kshamenk was initiated due to the death of his companion, a female orca, Balen, as a result Kshamenk became a solitary animal. These animals had been part of a captive breeding program (Mundo Marino and the Mundo Marino Foundation), which was suspended upon the death of the female. The purpose of the report is stated to be an investigation of various alternatives for future maintenance of Kshamenk.
- Maintenance at Mundo Marino– This alternative was presented as the most convenient for the aquarium. Although socialization with other cetaceans would be possible, it would not be the most adequate for the animal. If it were to remain at Mundo Marino, this animal would be without a partner for life and would be unable to reproduce. It is noted that the present trend of aquaria is to maintain orcas in groups.
 - Purchase/Collection of a female Orca– National and local regulations now prohibit the capture of cetaceans from the wild eliminating the option of capture of animal. There are no other orcas maintained in Argentina to negotiate a loan. Importation from abroad is not feasible as no animals are available for import as all other orcas are currently in breeding programs, and the Mundo Marino facility is considered of lower standard than all other marine mammal parks globally. As a receiving facility, Mundo Marino is without the financial resources to invest in a project of this magnitude. Given the current political and economic situation in Argentina, funding for projects currently in progress will be difficult to finish.
 - Release to the Wild– Dr. Bastida questions the motivation behind NGOs interested in liberating captive cetaceans. Regardless of the motivation, he continues that all releases are devoid of scientific content, fueled by sentiment and previous attempts have failed. He mentions “Keiko” as a case in point, the most expensive wild fauna “rescue” in history, involving a single individual animal. Based on current knowledge, an attempt to release Kshamenk would require a considerable financial investment, it is highly unlikely he would survive and the aquarium would lose the possibility of exhibiting this animal to the public.

The MMPA “renders the U.S. as the country with the most restriction, controls and scientific endorsements in legal matters for marine mammal handling. This regulation has been so stringent that in many aspects it has hindered scientific development of the knowledge of this fauna group, and for this reason it [the fauna group] must suffer due to

the various amendments made to date. Having said that, it is valid to assume that at the legal level said regulation is, presently, the most respectable, extensive and strict with regard to the goal of caring for the interests of marine mammals.”

NMFS considers that “*presently there are no scientific protocols to reintroduce captive marine mammals into the wild*” and “*Congress has responded stating that any release of captive dolphins should be carried out in accordance with scientifically accepted protocols.*” Reintroduction of animals into the wild carries numerous risks to the wild populations including disease transmission and undesirable genetic exchanges. Regarding the individual released, it is important to assure they have the ability to forage, defend themselves from predators, to be assimilated into a social group and are no longer habituated to humans.

Dr. Bastida goes on to describe the complex issues inherent in cetacean rehabilitation due to the necessary participation of humans, which may result in bonding of the animal to the human. The longer the necessary treatment and the social interaction necessary for the animal decreases its likelihood to be successfully released. Numerous examples are given in which Dr. Bastida concludes that release was not successful.

- Integration into a Breeding Program at another Aquarium– Dr. Bastida acknowledges the history of captive breeding programs and the development of artificial insemination. Although artificial insemination shows promise for the future, current procedures are still in their early stages, and have not been published. For this reason, the possibility of exchange between aquaria based upon the transport of sperm should be discarded. Therefore, maintaining Kshamenk as a solitary animal, until such procedures are perfected, is not in the best interest of the breeding population.
- Conclusions– The overall conclusion was that the best alternative for Kshamenk would be transfer from Mundo Marino, as a loan, to another aquarium to be incorporated into a captive breeding program. Integration into a new social group will further increase his quality of life. Mundo Marino will lose the opportunity to show a species of public interest, but will have the opportunity to receive future offspring that may result from the breeding program. Kshamenk’s genetic contribution to the global captive breeding program will be invaluable and increase genetic diversity of the population. The report further states the following considerations of which he feels Six Flags Worlds of Adventure can satisfy:
 - Overall health of the animal to be transferred complying with both Argentinean and U.S. regulations;
 - Legal structure of the loan agreement to be signed by both parties;
 - Overall condition of the receiving facility including life support systems;
 - Background of the participating professionals in the breeding program and the general handling of animals;

- Details related to transport including technical features of container, involved staff, and logistics;
 - Inter-company communication system related to Kshamenk's integration and participation in the breeding program; and
 - Education and conservation program of the receiving facility.
- 15) Herman Letter – Letter from Dr. Louis Herman, Director, Kewalo Basin Marine Mammal Laboratory, to Dr. Bastida dated April 23, 1993, in which Dr. Herman concludes that reintroduction would be very difficult for this animal. Reintroduction would require an investment of time and financial resources and post-release monitoring. It would be unlikely that this animal could survive without being successfully integrated into a pod. It has been suggested that this animal may have come from a transient pod, thus his pod members would be difficult to locate. It is Dr. Herman's opinion that *"the best decision of the orca in question is to continue to maintain it at your facility [Mundo Marino]"* making every effort to provide for its needs.
- 16) Todd Letter– Letter from Frank S. Todd, Executive Director, EcoCepts International, to Dr. Bastida dated March 22, 1993, in which Mr. Todd concludes that an attempt to release would be a *"grave error."* As especially social animals, successful release would require the release in the company of its original pod. Mr. Todd claims that there is no real evidence that any stranded cetacean has been successfully released in the long run. Orcas are not endangered and Mundo Marino maintained a rehabilitated female orca. The research and educational value as a pair of potentially breeding killer whales outweighs the benefit of release. He further states that *"field biologists have little hands on experience, but this is not the case with oceanarium professionals because they are the ones that have to do all the work, and are most aware how complicated a procedure this is."*
- 17) Manton Letter– Letter from Mr. Victor Manton, Secretary/Treasurer, European Association for Aquatic Mammals, to Dr. Bastida dated April 19, 1993, in which Mr. Manton concludes that *"release of captive Cetacea to the wild poses enormous problems and is seldom successful in the long term."*
- He further states that *"the welfare of captive animals is best addressed in the facilities to which they have become accustomed."* Even if this animal's original pod could be identified, there is no proof that the animal would be able to support himself. Evidence of previous attempts shows that in most cases failure results with the death of the animal unless returned to captivity.
- 18) von Fersen Letter– Letter from Dr. Lorenzo von Fersen, Scientific Coordinator, Tiergarten Nurnberg, to Dr. Bastida dated March 28, 1993, in which Dr. von Fersen agreed with the determination to take the animal into captivity and advises that release is not in this animal's best interest for the following reasons:

- There are no records of previous experiences that demonstrate that the release of a cetacean has been successful;
 - This species is not listed by the IUCN or NMFS;
 - This animal likely belonged to a transient pod; and
 - The animal was not healthy enough for release at the time of capture.
- 19) Dehnhardt Letter— Letter from Dr. Guido Dehnhardt, Department of Ethology, University of Bielefeld, to Dr. Bastida dated March 24, 1993, in which Dr. Dehnhardt does not recommend release because release of a single animal doesn't contribute to the survival of a species and should only be attempted for highly endangered species. Release would involve a substantial commitment of time and resources to a project that has little chance for success. Dr. Dehnhardt advises maintaining the animal at Mundo Marino for educational, research, and breeding purposes.
- 20) Tobayama Letter— Letter from Dr. Teruo Tobayama, Director, Kamogawa Sea World, to Dr. Bastida dated March 18, 1993, in which Dr. Tobayama recommends promotion of the captive breeding program at Mundo Marino by maintaining the killer whale in captivity. He further states that releases are not supported by the British and Canadian governments. He references a report published by the Advisory Committee on Marine Mammals for the Minister of Fisheries and Oceans, Government of Canada in which they conclude that, *“given the current state of knowledge, the release to the wild of cetaceans that have been in captivity for extended periods is not appropriate.”*
- 21) Allen Letter— Letter from Sonny Allen, Director of Marine Mammals, Marine World Africa/USA, to Dr. Bastida dated March 16, 1993, in which Mr. Allen concludes that reintroduction of this animal to the wild is premature. The letter states: *“I feel it is very premature of your Governmental Agency to ask you to release this animal back into the wild. Also stated in your letter, you have the support from your Governmental Authorities, so this is the agency you should address your situation to and look for direction and support from them. Give them all the information you can in regards to why this animal shouldn't be released now or even in the future.”*

To his knowledge, no killer whales have been successfully released back into the wild after stranding, as they become dependant on humans for medical treatment. As the pod of whales this animal came from is no longer in the area, chances of survival post-release are very slim. It is his professional opinion, that this animal shouldn't be released back into the wild and it is not likely to survive if released.

Mr. Allen further states: *“get as many veterinarians to write to your Government agencies in support of not releasing this animal back to the wild. Many times these types of action has a positive impact. I would also get in touch with your local newspapers and also the children to write letters. Politicians don't like to get pressure from either party.”*

- 22) Testimony of attending veterinarian, Dr. Julio Daniel Loureiro– Dr. Julio Daniel Loureiro confirms that he is licensed to practice veterinary medicine in Argentina and has been practicing continuously for 27 years. He has worked for Mundo Marino for the past 23 years and has spent that time caring for marine mammals. During this time, he has participated in the several strandings as an agent of Mundo Marino in which some animals have been released, others have died, and some have been rehabilitated, such as Kshamenk. Consideration was given for the release of Kshamenk during his rehabilitation. Based on Dr. Loureiro’s experience, several concerns were noted including the possibility of disease transmission to the wild stock; his current health at the time and habituation to humans, which occurred during rehabilitation. This animal was not known as a member of the resident killer whale population, therefore integration into his original pod would be difficult. (Testimony taken February 11, 2002.)

Additional Information Submitted by Applicant

Documents Provided:

- 1) Curriculum Vitae– During an April 10, 2002, meeting between NMFS and the applicant, they provided the CVs of Dr. Julio Daniel Loureiro, Mundo Marino attending veterinarian, and Dr. Ricardo Bastida, National Council for Scientific and Technical Research (CONICET). Dr. Loureiro states that he is affiliated with Mundo Marino, the Marine Mammal Rescue and Rehabilitation Center and Mundo Marino Foundation. Dr. Bastida’s affiliation is with CONICET and as a member of the faculty at the National University of Mar del Plata. His association with Mundo Marino is unclear from the document.
- 2) Letter from Mundo Marino– NMFS received a letter from Jose David Mendez, Mundo Marino, in support of the application on April 12, 2002. Mr. Mendez disputes the following claims that Kshamenk was the victim of a forced stranding and he is a Patagonian killer whale, therefore not from a resident pod. He reiterates Mundo Marino’s long history of marine mammal care, the professional staff, the frequent occurrence of strandings along the Buenos Aires Province, the lawful possession of Kshamenk, the detriment of maintaining Kshamenk as a solitary animal and the benefits of the breeding program.
- 3) Testimony of Mr. Miguel Cesar Marchi (provided by Mundo Marino on April 12, 2002)– Mr. Marchi states that he did not previously testify, as he did not find Kshamenk, but rather, another killer whale that stranded on November 17, 1992. He continues that he had been fishing in the area of Ria Las Salinas when he saw an animal during low tide that he confirmed to be a killer whale. Around 9:00 am, he notified Mundo Marino of the animal.

The following morning, November 18, 1992, his son, who was aboard the other fishing boat, informed him that they had found stranded killer whales near “Ria Ajo”. He further

states that he was in perfect health and had been released from the hospital a month earlier. In November of 1992, he was aboard the fishing boat. On November 17, 1992, he was aboard “Mundo Marino I” as a sailor. Although he was captain of the boat at the time, he was not serving in that capacity, as he frequently had to travel during those months and unavailable to captain the boat. In addition, San Clemente del Tuyu is a very small port with no more than 8 - 10 ships and a small number of fishermen. (Testimony taken April 11, 2002.)

- 4) Argentine Naval Coast Guard Certificate (provided by Mundo Marino on April 12, 2002)– These documents are in Spanish and have not been adequately translated. We acknowledge that these documents have been summarized as evidence that Mr. M. Marchi was aboard “Mundo Marino I” on the date mentioned in his testimony.
- 5) Cardiologic Hospital Institute Statement (provided by Mundo Marino on April 12, 2002)– This statement dated October 9, 1991, indicates that Mr. M. Marchi can *“perform his habitual tasks, making light or moderate efforts.”*
- 6) Legal Opinion issued by Fernanda Lopez Abramovich and Gabriel Mararasso of Marval, O’Farrel and Mairal, Attorneys at Law (submitted to NMFS on April 11, 2002)– Legal opinion addressed to Bill Hughes and Jim Gesualdi, Six Flags Worlds of Adventure, addressing local applicable proceeding for obtaining exportation and transport permits required under Argentinean laws and regulations. This opinion is based on facts provided by Mundo Marino regarding this case. Their analysis concludes that: *“the exportation of the killer whale is provided in the Argentine law and regulations, and consequently, is legally possible subject to the fulfillment of the requirements for the issuance of relevant licenses and permits in administrative proceedings. However the National and Provincial relevant authorities have discretionary faculties with respect to the issuance of licenses and permits.”*
- 7) Legal Opinion issued in Buenos Aires, Argentina (submitted to NMFS on May 8, 2002)– Legal opinion addressed to Mr. Octavio Perez Pardo, Director of Natural Resources Development, Argentine Ministry of Social Development has been provided to further address concerns regarding the legal proceedings in Argentina. This document apparently discusses a petition in the administrative proceedings in Argentina regarding authorizations necessary under Argentinean law.

“In conclusion, if the Director of Etiologic and Aquatic Resources has determined that the interested oceanarium has complied with all the scientific and technical protection as prescribed by the Oceanarium law, for the approval of a reproduction program, including the transport and temporary export of the breeding animal, there are no legal impediments to prevent it. The measure shall be implemented by executive mandate, thereby, over the fundamental considerations set forth in this judgement, also the cause of action petitioned by Wild Earth Foundation be denied, to which, in order to comply with its right and duly process abjective law, should be notified of this decision.”